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China, Peoples Republic of

Agricultural Situation

Protecting Your Intellectual Property Rights

2007

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Report Highlights:

China's rapid growth in production, income and spending has led to a commensurate growth in demand for food and other products. While quality U.S. food products often make it to store shelves, an estimated 20-30 percent of products are counterfeit. Big companies that have established themselves in China include protecting their intellectual property as an integral part of the cost of doing business. This means registering your patent, copyright or trademark with the appropriate Chinese registration office, and ensuring you understand and use the progressive enforcement mechanisms available in China to stop infringers.

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China's rapid growth in production, income and spending has led to a commensurate growth in demand for food and other products. While quality U.S. food products often make it to store shelves, an estimated 20-30 percent of products are counterfeit. Companies that have established themselves in China include protecting their intellectual property as an integral part of the cost of doing business. This means registering your patent, copyright or trademark with the appropriate government office, and ensuring you understand as well as use the progressive enforcement mechanisms available in China to stop infringers.

Even though China is a party to international agreements to protect intellectual property and China's Anti-unfair Competition Law provides some protection for unregistered trademarks, packaging, trade dress, trade secrets, and company names; a company must register its patents and trademarks with the appropriate Chinese agencies for property security in China. In 1998, China established the State Intellectual Property Office (SIPO), with the vision that it would coordinate China's intellectual property (IP) enforcement efforts by merging the patent, trademark and copyright offices under one authority. However, this has yet to occur. Today, SIPO is responsible for granting patents (national office), registering semiconductor layout designs (national office), and enforcing patents (local SIPO offices), as well as coordinating domestic foreign-related intellectual property rights (IPR) issues involving copyrights, trademarks and patents.

The current Trademark Law, with implementing regulations, went into effect on September 15, 2002, extending registration to collective marks, certification marks and three-dimensional symbols, as required by Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. China's new implementing rules for Copyright Law also came into force on this date. Unlike patent and trademark protection, copyrighted works do not require registration for protection. China grants protection to persons from countries belonging to copyright international conventions or bilateral agreements to which China is a member. However, copyright owners may wish to register voluntarily with China's National Copyright Administration (NCA) to establish evidence of ownership, should enforcement actions become necessary.

Overall, foreign companies distributing their products in China are advised to register their marks and/or logos with the China Trademark Office as well as register appropriate Internet domain names and Chinese language versions of their trademarks. China's 'first-to-file' system requires no evidence of prior use or ownership, leaving registration open to third parties. The China Trademark Office has cancelled Chinese trademarks that were unfairly registered, however.

While there can be some pitfalls related to registration, it is a relatively easy process. Starting as early as possible is key since registration often takes two to three years. Registration requirements are straightforward and a professional intellectual property rights attorneys or trademark registration agencies can be very helpful with completing the requirements for under \$500. The basic trademark registration requires an application, six copies of the trademark, and a power of attorney authorizing a trademark registration agent to submit the application on your behalf. Geographical indications, and collective and certification trademarks are all special or unique cases with special solutions.

Once you are registered, your protection is extensive. Whether in the U.S. or China, officials can seize counterfeit product based on certification and a citation to the China Trademark Office's Internet website where the registration is located. China's force to deal with counterfeiting challenges is constantly expanding to better protect registered protects.

Addressing infringement of IP in China follows a two-track system. The first and most prevalent is the administrative track, whereby an IP rights holder files a complaint at the

local administrative office. The second is the judicial track, whereby complaints are filed through the court system. Determining which IP agency has jurisdiction over an act of infringement can be confusing. In recognition of these difficulties, some regional IP officials have discussed plans for creating cross-jurisdictional enforcement procedures. In the meantime, the following is a list of major enforcements agencies in China:

- State Administration on Industry and Commerce (SAIC), Trademark Office – maintains authority over trademark registration, administrative recognition of well-known marks, and enforcement of trademark protection; handles disputes arising under the Anti-Unfair Competition Law
- State Intellectual Property Office (SIPO) – at the national level the agency is responsible for the examination of foreign and domestic patents and supervision of local SIPO bureaus; generally handles the administrative enforcement of patent complaints
- National Copyright Administration (NCA) - is responsible for copyright administration and enforcement, and nationwide copyright issues
- Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) - handles infringements of registered trademarks when the infringing products are inferior or of shoddy quality
- General Administration of Customs - bans the import/export of IPR infringing goods; in order for Customs to exercise this right, the IP holder must record its IP with Customs
- Public Security Bureau (police)/Procuratorate (prosecutors) - under enforcement provisions of TRIPs, China must provide IP remedies through criminal enforcement for commercial scale piracy and counterfeiting however, despite these criminal provisions, most IP cases continue to be handled through the administrative system
- The Supreme People's Procuratorate (SPP) - mainly responsible for leading procuratorates at various levels to perform legal supervision according to law, and ensuring the enforcement of State laws in a unified and proper manner
- Regional IPR Bureaus - some provinces and municipalities in China have established IPR bureaus or IPR committees to coordinate public awareness campaigns and, to a more limited extent, enforcement
- Supreme People's Court (SPC) - Companies can pursue civil actions in the local People's Court; appeals of administrative IPR determinations, such as fines, are generally made to Administrative Tribunals of the Supreme People's Court (SPC), while the Criminal Tribunals of the SPC are likely to hear criminal cases.

Conversely, the U.S. Government can only provide limited direct assistance because intellectual property rights are private rights. In many cases, the U.S. government can provide companies with information in navigating China's legal system however; we cannot provide American companies with legal advice or advocate on a company's behalf where a matter is before a court or administrative agency. When a company encounters blatant infringement of its IPR, the owner should hire a local counsel and pursue a preliminary investigation independently or through a contracted professional firm, with compliance to Chinese law. Rights holders will have the option to initiate actions or seek redress through either the judicial or administrative systems. Once a company decides to pursue a remedy, the U.S. government will monitor the case, if requested to do so by the company.

The Foreign Agricultural Service (FAS) Beijing IPR Office – provides intellectual property protection assistance to U.S. agricultural cooperators and agricultural companies newly

entering or already established in the China market. For assistance, refer to other GAIN reports on IP or contact:

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